

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 209 of 2005

SALIM SHEIKH
V/S
SYNDICATE BANK & ANR

Mr. US GEHLOT, for the appellant / petitioner

Date of Order : 16.3.2005

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant.

It is not in dispute that the appellant had engaged the counsel on 14.7.93, and thereafter even written-statement was not filed by the appellant. In the first instance, learned counsel submitted that the counsel engaged by him assured that he will be called as and when he needed, but then on being asked, as to whether written-statement was filed, thereupon the learned counsel informed that appellant time and again requested the learned counsel to file written-statement but then the other defendant assured that he had taken a loan, therefore, the appellant need not bother. In these circumstances, it cannot be said that the counsel was at fault in not informing the appellant.

It is significant to note that the things not as simple as sought to be projected, inasmuch as, after engaging the counsel, the learned trial Court vide order dated 30.12.93 directed the matter to proceed exparte against the appellant, which order was set aside on 3.8.94, and thereafter when the written-statement was not filed, the right to file written-statement was closed on 18.8.94, and then ultimately the decree was passed on 24.11.94. Then the appellant had applied for setting aside the exparte order dated 30.12.93, but matter was going on in continuity, and the exparte order was set aside on 3.8.94. In such circumstances, it cannot be accepted that the appellant time and again met the advocate, and that he was assured by the defendant No.1, and his advocate as alleged. No details have been

given, as to when did this event take place. If it had taken place prior to 30.12.93 that is of no consequence, as exparte order was got set aside by the appellant, and it cannot be believed to have taken place thereafter because the exparte proceedings were set aside on 3.8.94, and on 18.8.94, the right to file written-statement was closed, and decree was passed on 24.11.94 itself. Thus, the theory propounded by the appellant cannot be believed, and has rightly been disbelieved by the learned trial Court.

Learned trial Court has also not found any sufficient cause to have been made out for not filing the application in time, which has been filed after ten years, and I do not find any error in this finding of the learned trial Court either.

Thus, I do not find any error in the impugned order requiring interference in appeal by this Court. The appeal is, therefore, dismissed summarily.

(N P GUPTA), J.

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